



**Office of Research
Sponsored Programs**

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September 9, 2005

Defense Acquisition Regulations Council
Attn: Ms. Amy Williams, OUSD (AT&L)
DPAP (DAR), IMD 3C132
3062 Defense Pentagon
Washington, DC 20301-3062

RE: DFARS Case 2004-D010

Dear Ms. Williams:

This letter responds to the proposed amendment to the Defense Federal Acquisition Regulation Supplement (DFARS) regarding requirements for preventing unauthorized disclosure of export-controlled information and technology under DoD contracts, published in the Federal Register on July 12, 2005. The University of Tennessee, Office of Research, appreciates the opportunity to voice our concerns regarding this significant issue impacting university research.

At Issue:

The proposed amendment, if implemented by DoD, raises serious issues for research universities. Of greatest concern is the recommendation that an export control compliance clause be incorporated into DoD contracts, without recognizing the fundamental research exclusion that protects fundamental university research from export control licensing requirements.

If the rule is implemented, the signing of contracts involving foreign nationals or foreign persons anywhere in the world in research funded by the DoD would be subject to strict checking procedures. Universities working on DoD funded projects would need:

- licenses to involve foreign nationals in the research carried out and;
- an "access control plan including 'unique badging requirements' and 'segregated work areas' for foreign nationals."

The University of Tennessee at Knoxville is committed to helping protect the country against potential threats. We understand that this proposed amendment is the latest in a series of initiatives intended to minimize the risk of certain technologies falling into the hands of countries that the United States views as security threats. The University promotes a culture of compliance through an Export Control Management Program

which includes comprehensive initial training with periodic updates. While we do not dispute the need for thoughtful and meaningful evaluation of the current regulations, the concern is great that the proposed change will significantly impact research on our campus and does not demonstrate sufficient appreciation for the importance of fundamental research. Specifically, we have the following concerns:

Fundamental Research and the DoD Proposal

The University is concerned that the proposed rule will have a profound impact on the definition of fundamental research. Universities have long believed that research supported by the DoD that is classified as either 6.1 "basic" or 6.2 "applied," should be considered "fundamental" and therefore excluded from export control restrictions. By not mentioning the fundamental research exclusion, it is the University's fear that the DoD rule would apply to all DoD-sponsored research. This is seen as an attempt to chip away at the fundamental research exclusion and move universities toward a classified research model.

Furthermore, we are concerned that this rule is likely to result in a significant increase in the number of export control clauses that appear in university contracts, especially in subcontracts coming from industry. Once inserted these clauses will be difficult, if not impossible, to renegotiate. It is important for universities to retain the ability to negotiate the terms of the contract based on the specifics of the technology to be employed and the work to be done. Should DoD implementation fail to recognize the fundamental research exclusion, universities will face the difficult choice of seeking other funding sources or having export controls apply much more broadly to research performed for DoD. We urge the DoD to clarify their intention regarding this important matter for U.S. universities.

Badging /Segregating/Licensing of Foreign Nationals

The DoD recommends expanding its guidance to its program managers and contracting officers, instructing them to ensure that contracts identify export-controlled technology and require access control plans including badging requirements for foreign nationals, segregated work areas for controlled technology, training, annual self-assessments, and the securing of export licenses.

The proposed regulations concerning badging and segregating certain members of our academic community are fundamentally at odds with the atmosphere at a research university like the University of Tennessee where classes, seminars and facilities are open to all students. A public university is not set up to behave like a high-security national laboratory with segregated and walled areas that keep researchers and students apart. It is unclear how the recommendation to implement security badging systems or change the configuration of open university laboratories and buildings to provide secure work areas would be implemented and who would pay the high costs. Additionally, the concern is that

DoD agencies will incorrectly interpret compliance requirements to require access controls in all cases, even when fundamental research is being performed.

The nature of research on the university campus is increasingly interdisciplinary, collaborative and global. The cutting-edge research gains the United States has made are due, in great part, to the outstanding foreign students who have been trained at U.S. universities and then gone on to collaborate in subsequent research. The university endeavors to attract the best and brightest students, post-docs and faculty from many countries. We, like other research universities, rely on a rich international constituency to promote diversity and to assure that we continue to educate world academic leaders in technology and service to society. The federal government already performs extensive background checks on foreign nationals coming to the United States to perform research in academic laboratories through the Visa Mantis Program. Once the U.S government approves a foreign national under a visa that permits study and research at a U.S. university, we submit that there should be a very few and well-defined instances in which the individual must face additional restrictions in working within the academic research community.

Beyond the administrative burden, the licensing constraints that could potentially sideline research projects for up to one year will produce a reluctance to employ foreign nationals as graduate students or researchers and will further discourage international collaborations. If the research cannot wait for a license to be issued, the foreign national will lose any opportunity to participate or contribute. Under those circumstances, the best and brightest international talent will have no incentive to study or conduct research here.

Conclusion

It is imperative that The University of Tennessee and other such research campuses across the nation be perceived as welcoming and vital locations to foster research that will include foreign students and researchers and not embarrass them by badging and segregation. It is also imperative that the issue of fundamental research be clarified and mentioned in the contract clause. Before approving an amendment that is unclear and that would cause significant damage to the university research enterprise, there must be more thought and open dialogue with the academic community.

Again, we are grateful for the opportunity to comment. Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Robin Witherspoon".

Robin Witherspoon
Export Control Specialist